

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Invasive
Species/Infested Waters Citation Issued
to Thomas W. Vitters

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman on July 3, 2012, for a telephone Pre-Hearing Conference and evidentiary hearing.

Thomas W. Vitters, the licensee and motorist, appeared on his own behalf and without counsel. Conservation Officer Adam Block appeared on behalf of the Minnesota Department of Natural Resources (Department).

The parties agreed that an additional hearing date would not be necessary and that were ready to proceed with their presentations of the evidence. Officer Block and Mr. Vitters both testified under oath. The hearing record closed at the conclusion of the conference.

STATEMENT OF ISSUE

1. Whether Mr. Vitters transported his boat on a public roadway without first removing or opening the boat's drain plug, in violation of Minn. Stat. § 84D.10, subdivision 4?

The Administrative Law Judge concludes that Michael K. Vitters violated Minn. Stat. § 84D.10, subd. 4(b), on May 27, 2012. Accordingly, the Administrative Law Judge recommends that the Commissioner affirm the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Department Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment on a public roadway.¹

¹ See Minn. Stat. § 84D.13, subd. 4(4).

2. On May 27, 2012, Officer Block observed Mr. Vitters drive off a public road onto a DNR access area on the shore of Sand Point Beach in Prior Lake, Minnesota. At this time Mr. Vitters' vehicle was pulling a boat on a trailer. The boat had its drain plug in place during the time it was being transported.

3. On May 27, 2012, Conservation Officer Adam Block issued Citation No. 133576 to Mr. Vitters. The Citation asserted that Mr. Vitters transported a watercraft on a public road with the drain plug in place.

4. Mr. Vitters was not aware of the statute that forbids transportation of a boat without pulling the boat's drain plug. He acknowledges that he violated this statute on May 27, 2012.

5. Mr. Vitters timely appealed the Citation. He asserts that because his violation was not intentional that Officer Block should have issued him a warning.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. The Department has substantiated the violation as charged in the Citation.

3. Officer Block did not abuse his discretion when issuing the Citation.

4. The Commissioner should affirm Civil Citation 133576.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** the Citation issued to Thomas W. Vitters on May 27, 2012.

Dated: July 25, 2012

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63 - 14.69.